

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**KENTES WEST,  
#K-82893,**

**Plaintiff,**

**vs.**

**UNKNOWN PARTIES,**

**Defendants.**

**Case No. 16-cv-00986-SMY**

**MEMORANDUM AND ORDER**

**YANDLE, District Judge:**

On August 29, 2016, this case was severed from another civil rights action that Plaintiff Kentes West filed pursuant to 42 U.S.C. § 1983 against thirty-one defendants who allegedly violated his constitutional rights at Menard Correctional Center (“Menard”) in 2015 and 2016. *See West v. Butler, et al.*, No. 16-cv-414-SMY (S.D. Ill. 2016) (“original case”). The instant case focuses on a single access-to-courts claim (“Count 13,” original case) against unidentified parties (“Unknown Defendants”) (Doc. 2, p. 25). In connection with this claim, Plaintiff requested monetary relief (*id.*).

Count 13 did not survive preliminary review under 28 U.S.C. § 1915A, and this Court dismissed it without prejudice on October 11, 2016 (*see* Doc. 6). However, Plaintiff was granted leave to file a First Amended Complaint on or before November 8, 2016, if he wished to re-plead his claims against the Unknown Defendants (*id.*). Plaintiff was warned that failure to file a First Amended Complaint would result in dismissal of the action and the assessment of a strike (*id.*).

On October 31, 2016, Plaintiff filed a Motion to Voluntarily Dismiss this action (Doc. 7). He did not file a First Amended Complaint and, in fact, expressed his intention not to do so.

Seeking voluntary dismissal of the action at this early stage is Plaintiff's right. *See* FED. R. CIV. P. 41(a)(1)(A)(i).

Accordingly, Plaintiff's Motion to Voluntarily Dismiss this case is **GRANTED**. The action is hereby **DISMISSED without prejudice**. The Court will not assess a strike. However, Plaintiff's obligation to pay the filing fee for the action was incurred at the time the original action was filed, thus the filing fee of \$350.00 remains due and payable despite Plaintiff's request for voluntary dismissal. *See* 28 U.S.C. § 1915(b)(1), (e)(2); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998) (A prisoner incurs the obligation to pay the filing fee for a lawsuit when the suit is filed, and the obligation continues regardless of later developments in the suit, such as dismissal of the suit or denial of leave to proceed IFP.).

**IT IS SO ORDERED.**

**DATED: November 9, 2016**

s/ STACI M. YANDLE  
**STACI M. YANDLE**  
**United States District Judge**